

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

Docket No. 96-128

**REPLY COMMENTS OF THE
INMATE CALLING SERVICE PROVIDERS COALITION**

The Inmate Calling Service Providers Coalition ("ICSPC") submits the following reply comments in response to the Commission's Public Notice, DA 97-1673, released August 5, 1997, requesting comment on the remand issues in this proceeding ("Remand Notice").

I. THE COMMISSION SHOULD ADDRESS INTERIM COMPENSATION FOR ALL INMATE SERVICE PROVIDERS, NOT ONLY THE BOCS

In its comments on the Public Notice, ICSPC pointed out that the Commission should address interim compensation for inmate calls not merely for the Bell Operating Company ("BOC") court petitioners, but rather for all inmate service providers, including non-BOC LECs and independent providers. Of the other parties commenting on the issue, only MCI disagrees. According to MCI, since only the BOCs appealed the issue of interim compensation for inmate calls, no other party should be eligible for interim

compensation on remand. MCI Comments at 9-10. The court's decision, however, suggests that no such limitation is appropriate. Although the court noted that the issue was raised by the BOC petitioners, in remanding in the issue to the Commission the court spoke in terms of payphone service providers generally:

[W]e hold that the issue must be remanded to the Commission. Section 276 requires the Commission to promulgate regulations that will ensure that *PSPs* [payphone service providers] receive fair compensation . . . Under the regulations that the Commission has promulgated, *PSPs* will receive no compensation for coinless calls made from inmate phones during the first interim year . . . The Commission's interim compensation plan must therefore be remanded.

Illinois Public Telecommunications Association v. FCC, No. 96-1394, slip op. at 19-20 (D.C. Cir. July 1, 1997) (emphasis added). If the court had intended to restrict the Commission's reconsideration of the issue to the BOC petitioners alone, it would have used narrower language in framing the issue for remand.

In any case, the Commission itself invited comment "how the BOCs, *and any other similarly situated PSP*," should be compensated for inmate payphones during the interim period. Public Notice at 5, ¶ 3 (emphasis added). Having given public notice of its intent to receive comment on the issue in an open proceeding that is an outgrowth of a notice-and-comment rulemaking, there is no reason for the Commission to limit the scope of its consideration as MCI suggests.

Sprint agrees that the Commission is free to consider how "not just [BOCs], but 'any other similarly situated PSP,' should be compensated for [inmate] calls during the interim period." Comments of Sprint Corporation on Remand Issues at 14 ("Sprint

Comments"). While Sprint's focus is on non-BOC LECs, there is no basis for considering non-BOC LECs without also considering independent providers.

II. THE COMMISSION SHOULD PRESCRIBE COMPENSATION FOR ALL CALLS SENT TO A CARRIER FOR WHICH AN INMATE SERVICE PROVIDER DOES NOT RECEIVE CONTRACTUAL COMPENSATION

In its comments, ICSPC agreed with the BOCs that the Commission must prescribe interim compensation under Section 276 where inmate service providers must route calls to another carrier and are not otherwise compensated for those calls. ICSPC suggested that in determining whether an inmate service provider is entitled to interim compensation, the Commission should adopt an approach mirroring its per-call compensation rule, 47 C.F.R. § 64.1300, and provide compensation for any call sent to a carrier for which an inmate service provider does not receive contractual compensation. ICSPC explained that such an approach would ensure fair compensation for independent inmate service providers who are under contract with confinement facilities that require them to send all interLATA traffic to the facilities' presubscribed interLATA carrier.

The RBOC/GTE/SNET Payphone Coalition ("LEC Payphone Coalition") suggest a slightly different approach. In the LEC Payphone Coalition's view, the Commission should prescribe compensation "where the market, because of current or prior regulatory intervention, does not provide [inmate service providers] with compensation for 0+ calls." Comments of the RBOC/GTE/SNET Coalition at 36 ("LEC Payphone Coalition Comments"). According to the LEC Payphone Coalition, such an approach would compensate the BOCs and GTE where "prior regulation barred the [inmate service

provider] from negotiating for per-call compensation on 0+ calls, and existing contracts between the carrier and the location provider prevent such negotiated market transactions from providing that compensation today." LEC Payphone Coalition Comments at 36 (citation omitted).

ICSPC believes that its approach is preferable because it provides a bright-line test. However, in the event that the Commission adopts the LEC Payphone Coalition's formulation, that approach must be applied even-handedly to independent inmate service providers as well as the BOCs and GTE. Where, as a result of the pre-Section 276 prohibition on the BOCs and GTE participating in the selection of the carrier, a facility has entered into a continuing long-term contract with an interLATA carrier separate from its contract for inmate calling equipment and intraLATA service, independent inmate service providers that replace the BOC/GTE providers suffer the same disability due to the "prior regulatory intervention." Since the confinement facility has "locked up" the interLATA traffic, independent providers, like the BOCs, can only contract for the intraLATA calls and must send all interLATA calls to the facility's chosen carrier.

MCI argues that since the contracting is voluntary and inmate service providers are compensated through the "exclusive right to collect local and intraLATA call and interexchange access revenues . . . there is no need for the Commission to prescribe additional compensation for inmate calls." MCI Comments at 10. This ignores Section 276's clear directive that the Commission prescribe compensation "for each and every completed intrastate and interstate call using their payphones." 47 U.S.C. § 276(b)(1)(A).

Where an inmate service provider is required to provide its equipment for use by inmates placing interLATA calls, and is required to send the call to the confinement facility's presubscribed carrier without receiving any revenue in return, the Commission must prescribe some measure of fair compensation.

III. ADMINISTRATION OF INTERIM COMPENSATION FOR INMATE CALLS

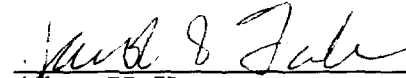
ICSPC agrees with the LEC Payphone Coalition that "because the presubscribed carriers already track and bill their clients for 0+ calls, they should be able to track and pay per-call compensation for them as well." LEC Payphone Coalition Comments at 37. Since the carriers must have records of the commission payments they have made, there is no reason that they should not pay compensation on a per-call compensation basis.

To the extent that a carrier is not, for some reason, able to pay per-call compensation, ICPSC agrees with the LEC Payphone Coalition that interim compensation should be paid based on average monthly inmate collect call volumes. See id. ICSPC supports the estimate of 186 interLATA inmate collect calls per month per payphone provided by the LEC Payphone Coalition. Id.

ICSPC further agrees with the LEC Payphone Coalition that the compensation amount for inmate 0+ calls should, at an absolute minimum, be set at the access code and subscriber-800 per-call compensation amount. Id. If anything, compensation for inmate 0+ calls should be set at a higher rate, reflecting the market's determination of fair compensation for such calls. See id. at 37-38.

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Respectfully submitted,



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